



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2364

Introduced 2/15/2013, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

740 ILCS 110/10

from Ch. 91 1/2, par. 810

Amends the Mental Health and Developmental Disabilities Confidentiality Act. Provides that the mental health records of a recipient may be disclosed in a civil, criminal or administrative proceeding in response to a subpoena or court order in cases involving sexual assault or sexual abuse when the recipient is the alleged perpetrator of the offense and the disclosure relates directly to the fact or immediate circumstances of the offense, if and only to the extent the court in which the proceedings have been brought, or, in the case of an administrative proceeding, the court to which an appeal may be taken, finds, after an in camera examination, that it is relevant, probative, and otherwise discoverable provided that other satisfactory evidence is not available regarding the facts sought to be established. Provides that a court may enter a protective order to prevent harm from the disclosure of the records. Provides for the redaction of certain information from the records. Provides that if findings are made in accordance with the new provisions, the court shall issue an order authorizing the disclosure of the records of a recipient or the issuance of a subpoena for the records to be delivered to the court for an in camera examination. Provides that the terms "sexual assault" and "sexual abuse" have the meanings given, respectively, to "criminal sexual assault" and "criminal sexual abuse" in the Criminal Code of 2012.

LRB098 09273 HEP 39413 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mental Health and Developmental
5 Disabilities Confidentiality Act is amended by changing
6 Section 10 as follows:

7 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

8 Sec. 10. (a) Except as provided herein, in any civil,
9 criminal, administrative, or legislative proceeding, or in any
10 proceeding preliminary thereto, a recipient, and a therapist on
11 behalf and in the interest of a recipient, has the privilege to
12 refuse to disclose and to prevent the disclosure of the
13 recipient's record or communications.

14 (1) Records and communications may be disclosed in a
15 civil, criminal or administrative proceeding in which the
16 recipient introduces his mental condition or any aspect of
17 his services received for such condition as an element of
18 his claim or defense, if and only to the extent the court
19 in which the proceedings have been brought, or, in the case
20 of an administrative proceeding, the court to which an
21 appeal or other action for review of an administrative
22 determination may be taken, finds, after in camera
23 examination of testimony or other evidence, that it is

1 relevant, probative, not unduly prejudicial or
2 inflammatory, and otherwise clearly admissible; that other
3 satisfactory evidence is demonstrably unsatisfactory as
4 evidence of the facts sought to be established by such
5 evidence; and that disclosure is more important to the
6 interests of substantial justice than protection from
7 injury to the therapist-recipient relationship or to the
8 recipient or other whom disclosure is likely to harm.
9 Except in a criminal proceeding in which the recipient, who
10 is accused in that proceeding, raises the defense of
11 insanity, no record or communication between a therapist
12 and a recipient shall be deemed relevant for purposes of
13 this subsection, except the fact of treatment, the cost of
14 services and the ultimate diagnosis unless the party
15 seeking disclosure of the communication clearly
16 establishes in the trial court a compelling need for its
17 production. However, for purposes of this Act, in any
18 action brought or defended under the Illinois Marriage and
19 Dissolution of Marriage Act, or in any action in which pain
20 and suffering is an element of the claim, mental condition
21 shall not be deemed to be introduced merely by making such
22 claim and shall be deemed to be introduced only if the
23 recipient or a witness on his behalf first testifies
24 concerning the record or communication.

25 (2) Records or communications may be disclosed in a
26 civil proceeding after the recipient's death when the

1 recipient's physical or mental condition has been
2 introduced as an element of a claim or defense by any party
3 claiming or defending through or as a beneficiary of the
4 recipient, provided the court finds, after in camera
5 examination of the evidence, that it is relevant,
6 probative, and otherwise clearly admissible; that other
7 satisfactory evidence is not available regarding the facts
8 sought to be established by such evidence; and that
9 disclosure is more important to the interests of
10 substantial justice than protection from any injury which
11 disclosure is likely to cause.

12 (3) In the event of a claim made or an action filed by
13 a recipient, or, following the recipient's death, by any
14 party claiming as a beneficiary of the recipient for injury
15 caused in the course of providing services to such
16 recipient, the therapist and other persons whose actions
17 are alleged to have been the cause of injury may disclose
18 pertinent records and communications to an attorney or
19 attorneys engaged to render advice about and to provide
20 representation in connection with such matter and to
21 persons working under the supervision of such attorney or
22 attorneys, and may testify as to such records or
23 communication in any administrative, judicial or discovery
24 proceeding for the purpose of preparing and presenting a
25 defense against such claim or action.

26 (4) Records and communications made to or by a

1 therapist in the course of examination ordered by a court
2 for good cause shown may, if otherwise relevant and
3 admissible, be disclosed in a civil, criminal, or
4 administrative proceeding in which the recipient is a party
5 or in appropriate pretrial proceedings, provided such
6 court has found that the recipient has been as adequately
7 and as effectively as possible informed before submitting
8 to such examination that such records and communications
9 would not be considered confidential or privileged. Such
10 records and communications shall be admissible only as to
11 issues involving the recipient's physical or mental
12 condition and only to the extent that these are germane to
13 such proceedings.

14 (5) Records and communications may be disclosed in a
15 proceeding under the Probate Act of 1975, to determine a
16 recipient's competency or need for guardianship, provided
17 that the disclosure is made only with respect to that
18 issue.

19 (6) Records and communications may be disclosed to a
20 court-appointed therapist, psychologist, or psychiatrist
21 for use in determining a person's fitness to stand trial if
22 the records were made within the 180-day period immediately
23 preceding the date of the therapist's, psychologist's or
24 psychiatrist's court appointment. These records and
25 communications shall be admissible only as to the issue of
26 the person's fitness to stand trial. Records and

1 communications may be disclosed when such are made during
2 treatment which the recipient is ordered to undergo to
3 render him fit to stand trial on a criminal charge,
4 provided that the disclosure is made only with respect to
5 the issue of fitness to stand trial.

6 (7) Records and communications of the recipient may be
7 disclosed in any civil or administrative proceeding
8 involving the validity of or benefits under a life,
9 accident, health or disability insurance policy or
10 certificate, or Health Care Service Plan Contract,
11 insuring the recipient, but only if and to the extent that
12 the recipient's mental condition, or treatment or services
13 in connection therewith, is a material element of any claim
14 or defense of any party, provided that information sought
15 or disclosed shall not be redisclosed except in connection
16 with the proceeding in which disclosure is made.

17 (8) Records or communications may be disclosed when
18 such are relevant to a matter in issue in any action
19 brought under this Act and proceedings preliminary
20 thereto, provided that any information so disclosed shall
21 not be utilized for any other purpose nor be redisclosed
22 except in connection with such action or preliminary
23 proceedings.

24 (9) Records and communications of the recipient may be
25 disclosed in investigations of and trials for homicide when
26 the disclosure relates directly to the fact or immediate

1 circumstances of the homicide.

2 (10) Records and communications of a deceased
3 recipient may be disclosed to a coroner conducting a
4 preliminary investigation into the recipient's death under
5 Section 3-3013 of the Counties Code. However, records and
6 communications of the deceased recipient disclosed in an
7 investigation shall be limited solely to the deceased
8 recipient's records and communications relating to the
9 factual circumstances of the incident being investigated
10 in a mental health facility.

11 (11) Records and communications of a recipient shall be
12 disclosed in a proceeding where a petition or motion is
13 filed under the Juvenile Court Act of 1987 and the
14 recipient is named as a parent, guardian, or legal
15 custodian of a minor who is the subject of a petition for
16 wardship as described in Section 2-3 of that Act or a minor
17 who is the subject of a petition for wardship as described
18 in Section 2-4 of that Act alleging the minor is abused,
19 neglected, or dependent or the recipient is named as a
20 parent of a child who is the subject of a petition,
21 supplemental petition, or motion to appoint a guardian with
22 the power to consent to adoption under Section 2-29 of the
23 Juvenile Court Act of 1987.

24 (12) Records and communications of a recipient may be
25 disclosed when disclosure is necessary to collect sums or
26 receive third party payment representing charges for

1 mental health or developmental disabilities services
2 provided by a therapist or agency to a recipient; however,
3 disclosure shall be limited to information needed to pursue
4 collection, and the information so disclosed may not be
5 used for any other purposes nor may it be redisclosed
6 except in connection with collection activities. Whenever
7 records are disclosed pursuant to this subdivision (12),
8 the recipient of the records shall be advised in writing
9 that any person who discloses mental health records and
10 communications in violation of this Act may be subject to
11 civil liability pursuant to Section 15 of this Act or to
12 criminal penalties pursuant to Section 16 of this Act or
13 both.

14 (13) Records of the recipient may be disclosed in a
15 civil, criminal, or administrative proceeding in response
16 to a subpoena or court order in cases involving sexual
17 assault or sexual abuse when the recipient is the alleged
18 perpetrator of the sexual assault or sexual abuse, the
19 recipient was an in-patient or resident of a public or
20 private hospital or mental health facility when an alleged
21 sexual assault or sexual abuse occurred, and the disclosure
22 relates directly to the fact or immediate circumstances of
23 the sexual assault or sexual abuse, if and only to the
24 extent the court in which the proceedings have been
25 brought, or, in the case of an administrative proceeding,
26 the court to which an appeal or other action for review of

1 an administrative determination may be taken, finds, after
2 in camera examination of testimony or other evidence, that
3 it is relevant, probative, and otherwise discoverable;
4 that other satisfactory evidence is not available
5 regarding the facts sought to be established by such
6 evidence; and that disclosure is more important to the
7 interests of substantial justice than protection from any
8 injury which disclosure is likely to cause. Information
9 concerning medical treatment and diagnosis shall be
10 redacted from any records produced unless the court has
11 found that the recipient has been informed as adequately
12 and as effectively as possible of the request for the
13 records. Information which does not concern medical
14 treatment and diagnosis, such as physical characteristics,
15 is not required to be redacted. A court may enter a
16 protective order to prevent harm from the disclosure of the
17 records. The court shall either issue an order authorizing
18 the disclosure of the records or an order authorizing the
19 issuance of a subpoena for the records to be delivered to
20 the court for an in camera examination. For purposes of
21 this paragraph (13), the term "sexual assault" shall have
22 the same meaning that the term "criminal sexual assault" is
23 given in Section 11-1.20 in the Criminal Code of 2012 and
24 the term "sexual abuse" shall have the same meaning that
25 the term "criminal sexual abuse" is given in Section
26 11-1.50 in the Criminal Code of 2012.

1 (b) Before a disclosure is made under subsection (a), any
2 party to the proceeding or any other interested person may
3 request an in camera review of the record or communications to
4 be disclosed. The court or agency conducting the proceeding may
5 hold an in camera review on its own motion. When, contrary to
6 the express wish of the recipient, the therapist asserts a
7 privilege on behalf and in the interest of a recipient, the
8 court may require that the therapist, in an in camera hearing,
9 establish that disclosure is not in the best interest of the
10 recipient. The court or agency may prevent disclosure or limit
11 disclosure to the extent that other admissible evidence is
12 sufficient to establish the facts in issue. The court or agency
13 may enter such orders as may be necessary in order to protect
14 the confidentiality, privacy, and safety of the recipient or of
15 other persons. Any order to disclose or to not disclose shall
16 be considered a final order for purposes of appeal and shall be
17 subject to interlocutory appeal.

18 (c) A recipient's records and communications may be
19 disclosed to a duly authorized committee, commission or
20 subcommittee of the General Assembly which possesses subpoena
21 and hearing powers, upon a written request approved by a
22 majority vote of the committee, commission or subcommittee
23 members. The committee, commission or subcommittee may request
24 records only for the purposes of investigating or studying
25 possible violations of recipient rights. The request shall
26 state the purpose for which disclosure is sought.

1 The facility shall notify the recipient, or his guardian,
2 and therapist in writing of any disclosure request under this
3 subsection within 5 business days after such request. Such
4 notification shall also inform the recipient, or guardian, and
5 therapist of their right to object to the disclosure within 10
6 business days after receipt of the notification and shall
7 include the name, address and telephone number of the
8 committee, commission or subcommittee member or staff person
9 with whom an objection shall be filed. If no objection has been
10 filed within 15 business days after the request for disclosure,
11 the facility shall disclose the records and communications to
12 the committee, commission or subcommittee. If an objection has
13 been filed within 15 business days after the request for
14 disclosure, the facility shall disclose the records and
15 communications only after the committee, commission or
16 subcommittee has permitted the recipient, guardian or
17 therapist to present his objection in person before it and has
18 renewed its request for disclosure by a majority vote of its
19 members.

20 Disclosure under this subsection shall not occur until all
21 personally identifiable data of the recipient and provider are
22 removed from the records and communications. Disclosure under
23 this subsection shall not occur in any public proceeding.

24 (d) No party to any proceeding described under paragraphs
25 (1), (2), (3), (4), (7), ~~or~~ (8), or (13) of subsection (a) of
26 this Section, nor his or her attorney, shall serve a subpoena

1 seeking to obtain access to records or communications under
2 this Act unless the subpoena is accompanied by a written order
3 issued by a judge, authorizing the disclosure of the records or
4 the issuance of the subpoena. No such written order shall be
5 issued without written notice of the motion to the recipient
6 and the treatment provider. Prior to issuance of the order,
7 each party or other person entitled to notice shall be
8 permitted an opportunity to be heard pursuant to subsection (b)
9 of this Section. No person shall comply with a subpoena for
10 records or communications under this Act, unless the subpoena
11 is accompanied by a written order authorizing the issuance of
12 the subpoena or the disclosure of the records. Each subpoena
13 duces tecum issued by a court or administrative agency or
14 served on any person pursuant to this subsection (d) shall
15 include the following language: "No person shall comply with a
16 subpoena for mental health records or communications pursuant
17 to Section 10 of the Mental Health and Developmental
18 Disabilities Confidentiality Act, 740 ILCS 110/10, unless the
19 subpoena is accompanied by a written order that authorizes the
20 issuance of the subpoena and the disclosure of records or
21 communications."

22 (e) When a person has been transported by a peace officer
23 to a mental health facility, then upon the request of a peace
24 officer, if the person is allowed to leave the mental health
25 facility within 48 hours of arrival, excluding Saturdays,
26 Sundays, and holidays, the facility director shall notify the

1 local law enforcement authority prior to the release of the
2 person. The local law enforcement authority may re-disclose the
3 information as necessary to alert the appropriate enforcement
4 or prosecuting authority.

5 (f) A recipient's records and communications shall be
6 disclosed to the Inspector General of the Department of Human
7 Services within 10 business days of a request by the Inspector
8 General (i) in the course of an investigation authorized by the
9 Department of Human Services Act and applicable rule or (ii)
10 during the course of an assessment authorized by the Abuse of
11 Adults with Disabilities Intervention Act and applicable rule.
12 The request shall be in writing and signed by the Inspector
13 General or his or her designee. The request shall state the
14 purpose for which disclosure is sought. Any person who
15 knowingly and willfully refuses to comply with such a request
16 is guilty of a Class A misdemeanor. A recipient's records and
17 communications shall also be disclosed pursuant to subsection
18 (g-5) of Section 1-17 of the Department of Human Services Act
19 in testimony at health care worker registry hearings or
20 preliminary proceedings when such are relevant to the matter in
21 issue, provided that any information so disclosed shall not be
22 utilized for any other purpose nor be redisclosed except in
23 connection with such action or preliminary proceedings.

24 (Source: P.A. 96-406, eff. 8-13-09; 96-1399, eff. 7-29-10;
25 96-1453, eff. 8-20-10; 97-566, eff. 1-1-12.)